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November 23, 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy, Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: MM Docket No. 92-221, RM 8071  
Quincy and Susanville, California  
BMLS #C67

Dear Ms. Searcy:

On behalf of Ralph E. Wittick, Licensee of Station KPCO (AM), Quincy, California, there is transmitted herewith an original plus four (4) copies of his Comments on Petition for Rule Making in connection with the above-referenced Docket proceeding.

Should there be any question regarding the attached Comments, please contact the undersigned.

Very truly yours,

*Denise B. Moline*  
Denise B. Moline

DBM:wp  
Attachment

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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C.

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NOV 23 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	MM Docket No. 92-221
	)	
Amendment of Section 73.202(b)	)	RM-8071
Table of Allotments,	)	
FM Broadcast Stations	)	
(Quincy and Susanville, California)	)	
To: Chief, Allocations Branch,		
Policy and Rules Division		

COMMENTS ON PETITION FOR RULE MAKING

Ralph E. Wittick, Licensee of Station KPCO (AM), Quincy, California, through his attorneys and pursuant to Sections 1.415 and 1.420 of the Commission's Rules, hereby submits the following Comments concerning the Petition for Rule Making filed on behalf of Olympic Broadcasters, Inc. ("Olympic" or "Petitioner") in the above-captioned proceeding.

As set forth below, the proposed amendment of §73.202(b) of the Commission's Rules by way of reallocation and modification of Channel 271A, Quincy, California to Channel 271C2, Susanville, California should be denied as contrary to Commission policy and the public interest. The proposed amendment fails to promote the policy goals of §307(b) of the Communications Act of 1934 because of its failure to promote an equitable and efficient allocation of the spectrum. In addition, the proposal would disrupt present

service to the Quincy, California community without providing sufficient public interest justification for the proposed service.

I. The Proposed Reallotment Does Not Serve The Public Interest Requirements of §307(b) of the Communications Act of 1934.

1. Commission policy requires that any proposed reallotment under §1.420 of the Rules conform to the policy considerations of §307(b) of the Communications Act of 1934. Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4879, 66 RR2d 877 (1989), recon. 5 FCC Rcd 7094, 68 RR2d 644 (1990). These considerations are, in descending order of importance: (1) provision of first aural service; (2) provision of second aural service; (3) provision of first local service; and (4) other public interest matters. While the proposed reallotment does not raise concerns regarding the first three of these policy goals, as each community is already provided with several broadcast channels, it does fall foul of the general public interest requirement.

2. Petitioner maintains that the proposed reallotment should be granted on public interest grounds, because the new arrangement would represent a more fair and equitable distribution of allotments between Quincy and Susanville. Petitioner maintains that Susanville has a population of 7,279, some 2.7 times greater than that of Quincy (population 2,700), and that the current distribution of allotments (three to Susanville and four to Quincy) is thereby inefficient and inequitable. Petitioner's claim is

unfounded. According to the 1990 U.S. Census, the Quincy - East Quincy census area in fact has a population of 4,271. In addition, several small pockets of population within the immediate area of Quincy bring the total population close to 4,500. Thus, the aggregate populations of the relevant communities are not so disparate as Petitioner claims. Furthermore, Susanville is already served by two on-air broadcast entities, and has been authorized for a third service which is currently off the air. Thus, its population is already well served by multiple local broadcast stations.

3. While it seeks efficient allocation of the spectrum, the Commission has consistently avoided trapping itself into promotion of mere technical efficiency based on numerical advantages, to the exclusion of other equity considerations. In its Modification of FM Authorizations, supra., it addressed itself to the possibility that such a policy would encourage licensees to attempt to use the revised reallocation petition procedures to abandon smaller markets in favor of larger ones. In order to avoid such temptations, the Commission held that the new allocation procedures would not affect the Commission's consideration of all substantive public interest concerns in its analysis. In addition to examining the mere technical efficiency of an allocation by comparing the number of services in a community to the size of its population, the Commission would continue to also examine the location of the proposed allotment with respect to other communities, and the availability of other services in the communities affected by the

proposed change. 68 RR2d at 648.

4. As noted above, Susanville, California already is served by two on-air stations, and has been allotted the frequency for a third. Quincy is also served by two on-air entities, one of whom, the Petitioner, proposes the instant reallocation. The only other broadcasting services to Quincy, California are two FM construction permits whose target on-air dates are unknown. Petitioner's proposal would leave Quincy with only a single on-air facility, and would add a third service to Susanville. Public policy does not warrant the shift of one allotment from Quincy to Susanville simply for the sake of an additional 2,500 persons who already are well provided with local services. As Commissioner Dennis stated, "We [The Commission] will continue to place a disproportionate value on maintaining existing service. We will not approve changes based on a simple comparison of gains versus losses." Modification of FM Authorizations, 66 RR2d at 886. (Separate Statement of Commissioner Patricia Diaz Dennis). While the allotment of new services between the two communities might dictate, in the interest of efficiency, that Susanville receive more channels than Quincy, the proposed shift of current services, involving as it does the loss of licensed facilities to one of the communities, requires a greater public policy justification than that which Petitioner has provided.

II. The Loss of Existing Service to Quincy, California Cannot Be Justified.

5. The Commission has long held that disruption of present local service is of a sufficiently severe nature as to require

strong justification. "That...curtailment of service is not in the public interest is axiomatic. Whether or not it may be offset by concomitant factors is something the Commission should consider." Hall v. FCC, 237 F.2d 567 (1956). This policy is grounded in the specific tailoring of local service to meet the community's particular needs, and the community's legitimate expectation of continued, stable presentation of such service. Radio Greenbriar, Inc., 80 FCC 2d 107, 46 RR 2d 1467 (Rev. Bd. 1980); SoundAmerica Corp., 50 RR2d 1223 (M.M.Bur. 1982); Atlantic Broadcasting Group, Inc., 50 RR 2d 1554 (M.M.Bur. 1982). These cases establish that any actual or de facto allotment involving a loss of a local service requires a much weightier public interest demonstration than that normally required in a reallocation proceeding involving a new frequency, substitution or upgrade.

6. In Pillar of Fire, 2 FCC Rcd 579, 62 RR2d 276 (1987), Radio New Jersey sought review of a Review Board decision granting Pillar of Fire's renewal application for its Zarephath, New Jersey station and denying the mutually exclusive application of Radio New Jersey for a construction permit for a new station at Somerville, New Jersey. In affirming the Review Board decision, the Commission cited public interest factors beyond the spectrum efficiency issues. "An important benefit derived from Pillar's renewal is the stability it will promote in the industry. By fostering an environment of stability, it is our intent to encourage broadcasters to make the investment necessary to sustain quality programming. In our view, the potential disruptive effect on the

industry occasioned by the elimination of an operating station solely on a mechanistic application of Section 307(b) far outweighs any incremental improvement in our allocation scheme that could be provided by Radio New Jersey." Id. at 281.

7. The Commission has more recently reemphasized in its modification of §1.420 that a request for reallocation in a case involving the loss of a current service to one community continues to carry this heavy burden of justifying a disruption of present service. Even if the new arrangement is technically preferable under Section 307(b) of the Communications Act, the Petitioner must still demonstrate that the disruption of the existing service does not outweigh the theoretical gains from the change. In reaffirming this second test, the Commission again emphasized that the revision of allotment petition procedures under §1.420 may not to be taken advantage of by a licensee simply to leave a smaller market in favor of a larger one.<sup>1</sup> This policy was applied in Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Eatonton and Sandy Springs, Georgia and Anniston and Lineville, Alabama, 70 RR2d 182 (1992), in which the Petitioner requested a reallocation from Anniston, Alabama to Shady Springs, Georgia, a suburb of Atlanta. The Commission rejected the petition on the grounds that, although a net gain of 1.8 million listeners would be

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<sup>1</sup>In this context, it is worth noting that the Petitioner, as successor-in-interest to Lobster Communications Corp. previously downgraded the allotment of the instant station in order to upgrade the allocation for KFIA-FM, Shingle Springs, CA. See Report and Order, MM Docket No. 92-20, RM-7645 (Released May 19, 1992. If it is now unable to upgrade its Quincy station without a reallocation to a larger community, it cannot be heard to complain, since existing allotment is the result of its own actions.

realized by the reallocation, and even though Anniston would not be left without local service, the change would come at the loss of a current operating service to 400,000 people in the Anniston area. In rejecting the petition, the Commission held that the size of the population affected was not in itself the only crucial element, but rather the size of the loss to the population losing a service relative to the size of the proposed gain in service elsewhere. A community of 10,000 with ten on-air broadcast stations available is much less likely to feel the loss of one of them than a community of 10,000 with only two or three available on-air services. While Anniston involved a considerable number of people, the rationale there is applicable to smaller markets and populations. That rationale involves the protection of a given community's expectation of continued service, tempered by a consideration of the number of services to which that community has present access. The public expectation of the continuance of an existing service thus poses a formidable hurdle for any licensee or permittee wishing to cut off that service in favor of another market elsewhere.

8. The Petitioner has failed to demonstrate that the disruption of present service in Quincy would be outweighed by any benefits. Quincy currently has only two local on-air services, one of which is the Petitioner's. A reallocation of Channel 271 to Susanville would involve the immediate 50% reduction of existing local service to the Quincy population, leaving it with only one on-air broadcast service. Nor does the fact that two other



construction permits have been issued for Quincy justify the reduction in current service. On this point, the Commission is firm:

...From the public perspective, the potential for service at some unspecified future date is a poor substitute for the signal of an operating station that can be accessed today simply by turning a radio knob.

We specifically wish to clarify that replacement of an operating station with a vacant allotment or unconstructed permit, although a factor to be considered in favor of the proposal, does not adequately cure the disruption of "existing service" occasioned by removal of an operating station.

Modification of FM Authorizations, 68 RR2d at 650.

9. The Commission's concern with present public expectation of continuing existing service is a serious one. A petitioner wishing to overcome that expectation must demonstrate extraordinary public policy reasons for doing so. Petitioner has not demonstrated sufficient public interest reasons which would justify cutting in half the services presently enjoyed by a population of nearly 5,000, and reducing the scope of that population's choice to a single AM broadcast station, and no FM service.

WHEREFORE, for the above-stated reasons, Wittick respectfully requests that the above-captioned Amendment of §73.202(b) be REJECTED, the Petition for Rulemaking filed on behalf of Olympic

Broadcasters, Inc., be DENIED, and that the current Table of Allotments for Quincy and Susanville, California remain UNCHANGED.

Respectfully submitted,

RALPH E. WITTICK

By:



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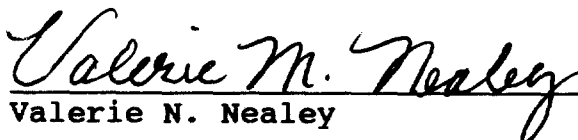
November 23, 1992

CERTIFICATE OF SERVICE

I, Valerie N. Nealey secretary in the law firm of Allen, Moline & Harold hereby certify that I have caused to be served, this 23rd day of November, 1992, a copy of the foregoing "Comments on Petition for Rule Making" by first-class mail, postage prepaid, on the following:

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